Supreme Court, U.S.
FILED
JAN 6
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-325 (4)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners,

v.

MAURICE SMITH, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Arkansas

BRIEF OF NATIONAL PRIVATE TRUCK COUNCIL, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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January 6, 1989

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
INTERESTS OF AMICUS CURIAE	1
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	5
ARGUMENT	6
THE *CHEVRON* EXCEPTION TO THE GENERAL RULE OF RETROACTIVE APPLICATION SHOULD NOT BE APPLIED TO DISCRIMINATORY STATE TAXATION THAT IS FOUND INVALID UNDER THE COMMERCE CLAUSE	6
A. The Equities Should Never Favor A State's Retention of Taxes Exacted From A Discriminated-Against Class of Taxpayers	8
B. Failure To Return Discriminatory Taxes Fails To Eliminate The Unconstitutional Burden on Interstate Commerce	11
C. Application of *Chevron's* Case-By-Case Analysis Will Lead To Greater Federal Court Intrusion Into State Tax Proceedings, Contrary To Congressional Policy, And To Greater Noncompliance With State Tax Laws and Procedures	12
D. Application of *Chevron* Analysis To This Category Of Cases Would Require This Court's Close Review of Each Case To Ensure That National Interests Are Protected	14
CONCLUSION	17

TABLE OF AUTHORITIES

CASES: Page

American Trucking Associations, Inc. v. Scheiner, 107 S.Ct. 2829 (1987) 4
American Trucking Associations, Inc. v. Conway, 508 A.2d 405 (Vt. 1986), *cert. denied*, 107 S.Ct. 3262 (1987) 6
American Trucking Associations, Inc. v. O'Neill, 522 F. Supp. 49 (D. Conn. 1981) 12
Chevron Oil Co. v. Huson, 404 U.S. 97 (1971) ..... passim
Cipriano v. City of Houma, 395 U.S. 701 (1969) 9
Continental Trailways, Inc. v. Director, Division of Motor Vehicles, 509 A.2d 769 (N.J. 1986) 15
Equal Employment Opportunity Commission v. Vucitech, 842 F.2d 936 (7th Cir. 1988) 8
Halliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64 (1963) 11
Huie v. Private Truck Council of America, Inc., 466 N.E.2d 435 (Ind. 1984) 3
McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940) 14
National Can Corp. v. Department of Revenue, 749 P.2d 1286 (Wash.), *appeal dism'd* and *cert. denied*, 108 S.Ct. 2030 (1988) 11
Nippert v. Richmond, 327 U.S. 416 (1946) 14
Private Truck Council of America Inc. v. Florida Department of Revenue, 531 So.2d 367 (Fla. App. 1988) 3
Private Truck Council of America, Inc. v. Georgia, 258 Ga. 531, 381 S.E.2d 378 (1988) 3
Private Truck Council of America, Inc. v. Louisiana, No. 289, 481 (19th Judicial Dist. Ct. East Baton Rouge Parish; judgment entered Jan. 29, 1986) 3
Private Truck Council of America, Inc. v. New Hampshire, 517 A.2d 1150 (N.H. 1986) 3, 6, 15
Private Truck Council of America, Inc. v. New Jersey, 111 N.J. 214, 544 A.2d 33 (1988) 3

TABLE OF AUTHORITIES—Continued

Page

Private Truck Council of America, Inc. v. Secretary of State, 503 A.2d 214 (1986), *cert. denied*, 476 U.S. 1129 (1986) 3, 6
Saint Francis College v. Al-Khazraji, 107 S. Ct. 2022 (1987) 8
Salorio v. Glaser, 461 A.2d 1100 (N.J.), *cert. denied*, 464 U.S. 993 (1983) 9, 11
United States v. County of Fresno, 429 U.S. 452 (1977) 14
United States v. Johnson, 457 U.S. 537 (1982) 9

STATUTES:

Federal Tax Injunction Act, 28 U.S.C. § 1341 12

OTHER AUTHORITIES:

U.S. Congress, Office of Technology Assessment, *Gearing Up For Safety: Motor Carrier Safety in a Competitive Environment*, OTA-SET-382 (U.S.G.P.O. 1988) 2

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Pursuant to Rule 36.2 of the Rules of this Court and with the accompanying writtten consents of the parties, National Private Truck Council, Inc. ("NPTC") submits this brief as amicus curiae in support of petitioners, and urges the Court to reverse the decision of the Arkansas Supreme Court.

THE INTERESTS OF AMICUS CURIAE

NPTC is a national association of private motor carriers. Private motor carriers are companies which own and operate trucks in furtherance of their own non-transportation business, as distinguished from "for-hire" carriers, which carry goods for others for compensa-

tion and whose principal association is petitioner American Trucking Associations, Inc.[1] Private carriers constitute the largest segment of the interstate trucking industry; in 1986 they accounted for approximately 67 percent of the heavy trucks (over 26,000 pounds) operated by commercial enterprises in the United States.[2] Most private carriers not only operate their own truck fleets but also employ the services of for-hire carriers, and are thus engaged in interstate commerce as both carriers and shippers.

NPTC was formed on October 1, 1988 as a result of the merger of two associations representing private carriers, the Private Truck Council of America, Inc. and the National Private Trucking Association, Inc. As a result of that merger NPTC is the only national association devoted exclusively to the interests of private carriers. NPTC has more than 2,500 member and associate member companies; these members represent an extremely broad range of companies whose businesses are critically dependent on interstate truck transportation.

NPTC and its members have a vital interest in the issues presented in this case. Many of NPTC's members are companies who were subject to and who paid Arkansas' Highway Use Equalization (HUE) Tax. They are thus members of the plaintiff class and have a direct monetary interest in the outcome of this case. More generally, discriminatory state transportation taxes like Arkansas' HUE tax impose an enormous burden on NPTC's members, and removing that burden is one of NPTC's most important objectives.

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[1] While for-hire carriers operating in interstate commerce must first obtain operating authority from the Interstate Commerce Commission, private carriers are exempt from ICC regulation. 49 U.S.C. § 10524.

[2] U.S. Congress, Office of Technology Assessment, *Gearing Up For Safety: Motor Carrier Safety in a Competitive Environment*, OTA-SET-382 (U.S.G.P.O. 1988), p. 34.

To that end NPTC and its predecessors have taken an active role in challenging state motor carrier taxes that discriminate against interstate commerce. In 1984 the Private Truck Council of America, Inc. ("PTCA") succeeding in obtaining a judgment by the Supreme Court of Indiana striking down an Indiana property tax levied on vehicles engaged in interstate commerce. *Huie v. Private Truck Council of America, Inc.*, 466 N.E.2d 435 (Ind. 1984). In 1986 PTCA successfully challenged a Louisiana fee imposed only on private carriers operating in interstate commerce in Louisiana and registered in other states. *Private Truck Council of America, Inc. v. Louisiana*, No. 289, 481 (19th Judicial Dist. Ct. East Baton Rouge Parish; judgment entered Jan. 29, 1986). In 1986 and 1988 PTCA also obtained favorable judgments from the Supreme Courts of Maine, New Hampshire, New Jersey and Georgia and from the First District Court of Appeal of Florida, invalidating so-called "retaliatory taxes" which were imposed by those states only on carriers whose vehicles are registered in certain other states and which were enacted specifically to retaliate against Arkansas' HUE tax and similar taxes enacted by other states. *Private Truck Council of America, Inc. v. Secretary of State*, 503 A.2d 214 (1986), *cert. denied*, 476 U.S. 1129 (1986); *Private Truck Council of America Inc. v. State of New Hampshire*, 517 A.2d 1150 (N.H. 1986); *Private Truck Council of America, Inc. v. New Jersey*, 111 N.J. 214, 544 A.2d 33 (1988); *Private Truck Council of America, Inc. v. Georgia*, 258 Ga. 531, 381 S.E.2d 378 (1988); *Private Truck Council of America Inc. v. Florida Department of Revenue*, 531 So.2d 367 (Fla. App. 1988). Suits challenging similar retaliatory taxes imposed by Oklahoma and Nebraska are still pending. NPTC intends to continue to monitor state taxes and fees closely and to challenge those it believes to be unconstitutional.

The issues presented in this case are present in every suit successfully challenging discriminatory state taxes

on Commerce Clause grounds, including those brought by PTCA and now maintained by NPTC. NPTC believes that enforcing an effective refund remedy in such cases is critical to achieving the basic purposes of the Commerce Clause. If the decision below is allowed to stand, it will serve to deprive NPTC's members and those engaged in interstate commerce of the very protections the Commerce Clause was adopted to provide.

STATEMENT OF THE CASE

Petitioners brought this suit in 1983 in the courts of Arkansas before the Arkansas' Highway Use Equalization (HUE) tax went into effect. At that time they sought but were denied a preliminary injunction against collection of the tax pending the outcome of the litigation (Pet. 3; Pet. App. 39a-41a). Four years later, after Arkansas had collected some $159 million in HUE taxes, the Arkansas Supreme Court sustained petitioners' claims on the merits and invalidated the HUE tax (Pet. App. 1a-3a). It did so on the basis of this Court's June 23, 1987 decision in another similar suit brought by petitioners challenging a Pennsylvania tax. *American Trucking Associations, Inc. v. Scheiner*, 107 S.Ct. 2829 (1987). With respect to petitioners' claims for refunds of the taxes collected since 1983, however, the Arkansas Supreme Court purported to apply this court's decision in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) to deny refunds of all HUE taxes paid before August 14, 1987, the date that Justice Blackmun stepped in to require all taxes collected thenceforth to be held in escrow (Pet. App. 3a-5a).

SUMMARY OF ARGUMENT

Although NPTC agrees fully with petitioners' claim that the court below erred in its analysis of the *Chevron* factors as applied to the facts of this case, NPTC submits more broadly that application of the *Chevron* exception to the general rule of retroactive application is rarely, if ever, appropriate in cases involving state taxes found to discriminate against out-of-state enterprises in violation of the Commerce Clause, for the following reasons:

First, with respect to the third *Chevron* factor, NPTC submits that there are not circumstances in which "equitable" considerations would militate in favor of allowing states to retain taxes collected from a discriminated-against class of taxpayers and found invalid for that reason. Because states can always raise needed revenues through non-discriminatory taxes, there can never be any "equitable" justification for requiring the discriminated-against class and not a non-discriminatory class to bear a state's revenue burdens.

Second, in view of the nature of the Commerce Clause violation, failure to require states to return discriminatory tax payments fails to eliminate the unconstitutional burden.

Third, state court reliance on *Chevron* to avoid refunds of taxes found to be discriminatory will force interstate enterprises to seek interlocutory protection from federal courts, and will thus inevitably lead to greater federal court intrusion into state tax proceedings, contrary to congressional policy. It will also lead to greater non-compliance by taxpayers with state tax laws, which will promote inequities among taxpayers.

Finally, application of the *Chevron* analysis to this class of cases will, as this case illustrates, necessitate this Court's continued review and close scrutiny of every case

in which state courts rule in favor of their state treasuries in order to ensure that the interests of out-of-state enterprises and the policies of the Commerce Clause are properly weighed and protected.

ARGUMENT

THE *CHEVRON* EXCEPTION TO THE GENERAL RULE OF RETROACTIVE APPLICATION SHOULD NOT BE APPLIED TO DISCRIMINATORY STATE TAXATION THAT IS FOUND INVALID UNDER THE COMMERCE CLAUSE.

NPTC believes it is important to stress at the outset that the only issue presented for this Court's resolution in this case is whether the Arkansas Supreme Court correctly relied on and applied *Chevron* to deny refunds of all HUE taxes paid before August 14, 1987. There may be many other grounds on which states may appropriately deny or limit refunds of taxes found to violate the Commerce Clause or any other constitutional provision, such as statutes of limitations, requirements of proof, and so forth, the enforceemnt of which may serve legitimate state interests that are wholly unrelated to the tax at issue or its discriminatory effect. Conversely, there may be other grounds that states may invoke to deny refunds that are not constitutionally permissible.[3] This case presents no issue respecting the

[3] For example, in a number of cases brought by NPTC's predecessor, PTCA, state courts have held that state sovereign immunity barred the taxpayers' claims for refunds of taxes paid prior to the filing of the suits (*see Private Truck Council of America, Inc. v. Secretary of State*, 503 A.2d 214 (Me.), *cert. denied*, 476 U.S. 1129 (1986); *Private Truck Council of America, Inc. v. New Hampshire*, 517 A.2d 1150 (N.H. 1986); and in a case brought by petitioner ATA against Vermont, the Vermont Supreme Court held that sovereign immunity barred refunds of all taxes paid *after* the suit was filed. *American Trucking Associations, Inc. v. Conway*, 508 A.2d 405 (Vt. 1986), *cert. denied*, 107 S.Ct. 3262 (1987). Respondents in this case have likewise argued that sovereign immunity bars all tax refunds. ATA and NPTC vigorously dispute the proposition

validity of any ground for denying or limiting tax refunds in this case other than the principles set forth in *Chevron*.

The issue presented, though limited, is an extremely important and recurring one because state courts are invoking *Chevron* with increasing frequency to deny tax refunds to victims of discriminatory taxation. As to that issue, NPTC submits that the Arkansas Supreme Court misapplied *Chevron*. NPTC believes that the considerations set forth in *Chevron* as applied to the circumstances of this case clearly militate in favor of full retroactive relief and warrant refunds of all HUE taxes paid since this suit was brought. NPTC expects that the petitioners will fully address these points and will demonstrate that the *Chevron* factors, as applied to the facts of this case, warrant full retroactive relief. NPTC will not attempt to duplicate that anticipated discussion.

What NPTC wishes to address as amicus in this brief is what it perceives to be a more fundamental problem with the *Chevron* doctrine in this class of cases, a problem that goes beyond the particular circumstances of this case and the application of *Chevron* to those circumstances. For the reasons discussed below, NPTC submits that, because of the nature of the issues and interests involved, the *Chevron* doctrine—which is an exception to the general principle that judicial decisions declaring rights have full retroactive effect—is not really appropriate at all with respect to this category of cases, involving discriminatory state taxes found to violate the Commerce Clause, and should not be applied to them. NPTC further submits that it is important for the Court to make clear that the *Chevron* exception should rarely, if ever, be applied to this category of cases. Otherwise,

that states have immunity against claims of refunds of taxes found to violate the Federal Constitution. The court below declined to reach that issue in this case, however, and it is not presented for this Court's review.

this Court will be repeatedly forced, by the very nature of the problem, to review closely each state court's application of the *Chevron* factors to the particular facts in order to ensure that the constitutional rights of interstate enterprises are protected and that the purposes of the Commerce Clause are served.

A. The Equities Should Never Favor A State's Retention Of Taxes Exacted From A Discriminated-Against Class of Taxpayers.

As the Court has frequently noted, the general rule is that judicial decisions declaring constitutional and statutory rights have retroactive effect. *See, e.g., Saint Francis College v. A-Khazraji*, 107 S. Ct. 2022, 2025 (1987). As the United States Court of Appeals for the Seventh Circuit recently observed.

> This result is due not to the myth that courts do not make, but only find, law, so that their decisions merely declare what was the law all the time, but to a sense that as between two surprised parties the burden of surprise should rest on the party who guessed wrong about the direction in which the law was moving. . . .

Equal Employment Opportunity Commission v. Vucitech, 842 F.2d 936, 941 (7th Cir. 1988).

Chevron and other cases have applied an exception to the general rule in limited circumstances where retroactive application would be inappropriate. This Court in *Chevron* identified three circumstances that would warrant limiting the effect of a decision in a civil case to prospective application: (1) where the decision "establish[es] a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed . . . ;" (2) where retrospective application would retard, or would not further, the purpose and effect of the new rule, and (3)

where retoractive application " 'could produce substantial inequitable results . . .' " 404 U.S. at 106-107; quoting from *Cipriano v. City of Houma*, 395 U.S. 701, 706 (1969). Although the Court has not clearly stated whether all three circumstances must be satisfied in order to limit the effect of a decision prospectively, the fact that such a result is an exception to the general rule suggests that they must all be present.[4] Certainly there would appear to be no basis for refusing to apply the general rule of retroactivity when the third circumstance is absent—*i.e.*, when doing so would not result in any substantial inequity.

With respect to the third factor, however, NPTC submits that considerations of "equity" should never militate in favor of allowing a state to retain taxes collected from a class of taxpayers when those taxes are found invalid because they discriminated against that class. In their analyses of the equities under *Chevron*, the court below and others have relied on the fact that the state in question has critical revenue needs and has put the tax proceeds to worthy purposes, such as maintaining the highways for the benefit of all users including the discriminated-against taxpayers. Pet. App. 4a.[5]

Those facts, however, are completely irrelevant to an analysis of the competing "equities." That is so because states always have the power to raise the revenues by non-discriminatory taxes, and can do so to fund any refund liability that may be imposed. Accordingly, the question of tax refunds, *vel non*, is never a question of whether the state must bear an additional cost or forego

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[4] For example, the Court has described the first factor—that the decision established a "new principle of law"—as a "threshold" requirement for prospective application. *United States v. Johnson*, 457 U.S. 537, 550 n.12 (1982).

[5] See also, *e.g., Salorio v. Glaser*, 461 A.2d 1100, 1134 (N.J.), *cert. denied*, 464 U.S. 993 (1983).

certain revenues; in every case it is simply a question of which class of taxpayers is to bear the burden of the particular revenue need, the discriminated-against class or a broader, non-discriminatory class. Imposing new, non-discriminatory taxes may be *inconvenient* for a state, and it may be politically *unpopular*, but those are not equities that should ever militate in favor of allowing a state to retain the proceeds of discriminatory taxes.

Furthermore, for courts to attempt to weigh and compare the revenue needs of states and the worthiness of projects funded by various taxes against the interests of interstate enterprises in obtaining refunds would be a completely inappropriate basis for delineating the scope of constitutional remedies in particular cases. There is simply no principle or standard grounded in the Constitution by which courts could make such comparisons.

In short, because requiring states to refund unconstitutional taxes to a discriminated against class could never, in NPTC's submission, produce a "substantial inequitable result," application of the *Chevron* exception to this class of cases is simply inappropriate.[6]

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[6] The court below also concluded that refunds of all taxes paid by out-of-state truckers would be inequitable because such refunds would provide "an unconscionable refund far in excess of a fair recovery for what they may have suffered due to the tax." Pet. App. 5a. This observation is not relevant to an analysis of the equities under *Chevron* and does not support the judgment below; it is only relevant to the extent of the refunds that may be due to petitioners and the class of out-of-state carriers they represent. As a matter of federal constitutional law out-of-state taxpayers only have a claim to refunds of discriminatory taxes to the extent the taxes had a discriminatory impact on them, and petitioners have never contended otherwise. (What they contended below is that they have a right under *state* law to refunds of the full amount of the taxes paid.) The fact that Arkansas might, as a matter of federal law, limit petitioners' refunds to amounts in excess of the amounts paid by in-state truckers provides no reason, in equity or otherwise,

B. Failure To Return Discriminatory Taxes Fails to Eliminate The Unconstitutional Burden On Interstate Commerce.

A second reason why NPTC believes that application of the *Chevron* exception is inappropriate in cases involving discriminatory state taxes violative of the Commerce Clause is because the imposition and payment of such taxes *is* the unconstitutional burden, and the only way to eliminate the burden and to correct the unconstitutional violation is to return the payment. *See, e.g., Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64 (1963), sustaining refund claims of sales taxes that discriminated against out-of-state products. Even if a decision finding the tax to be discriminatory establishes a new rule of law that was not foreseeable, that fact should not justify the refusal to eliminate the unconstitutional burden by returning the discriminatory exaction.

State taxes that discriminate against interstate commerce in violation of the Commerce Clause are analogous, for purposes of the retroactivity/prospectivity issue, to state or federal laws or actions that are held to amount to takings of property in violation of the Fourteenth or Fifth Amendment. If the Court finds that a person's property was taken without compensation, the fact that the decision may have established a new principle of law is not a reason to excuse the takers from paying appropriate compensation.[7] Otherwise the result would be to

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for refusing to refund at least the discriminatory portion of the taxes to petitioners.

Other courts have also denied retroactive refund relief for reasons which purport to reflect a balancing of equities but which in fact would merely justify the state in limiting the amount of refunds paid to various taxpayers. See, *e.g., National Can Corp. v. Department of Revenue*, 749 P.2d 1286 (Wash.), *appeal dism'd* and *cert. denied*, 108 S.Ct. 2030 (1988); *Salorio v. Glaser*, 461 A.2d 1100 (N.J.), *cert denied*, 464 U.S. 993 (1983).

[7] As noted at the outset, as in the case of tax refunds, there may be other legitimate grounds for limiting the retrospective liability

permit and sanction an unconstitutional taking of property. Similarly, to allow states to retain taxes that are found to discriminate against interstate commerce is to permit an unconstitutional burden on such commerce.

C. Application Of *Chevron's* Case-By-Case Analysis Will Lead To Greater Federal Court Intrusion Into State Tax Proceedings, Contrary to Congressional Policy, And To Greater Noncompliance With State Tax Laws and Procedures.

The *Chevron* exception should not be applied to this class of cases for the additional reasons that to do so is likely to increase the intrusions of federal courts into state tax proceedings, contrary to congressional policies, and also to increase noncompliance with state tax laws.

The Federal Tax Injunction Act, 28 U.S.C. § 1341, prohibits federal courts from enjoining the collection of state taxes so long as state law provides a "plain, speedy and efficient remedy" to taxpayers with respect to state taxes that violate federal constitutional or statutory restrictions. This Act reflects Congress' strong policy against federal court interference with state tax collections and state tax proceedings. If state law does not provide a reasonable prospect of refunds of unconstitutional taxes, the Act does not apply and federal courts may enjoin their collection, either permanently or preliminarily pending the adjudication of their validity. *See, e.g., American Trucking Associations, Inc. v. O'Neill*, 522 F. Supp. 49 (D. Conn. 1981) (preliminarily enjoining a state truck tax because of substantial doubts that state law provided a refund remedy.)

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of states for actions that appeared appropriate and noncompensable when they occurred, such as statutes of limitations. But the fact that the determination of liability occurred in the course of establishing a new principle of law is not a rational basis for refusing to require compensation.

To the extent that state courts appear disposed to invoke *Chevron* or other grounds to refuse refunds of taxes challenged on Commerce Clause grounds, taxpayers will be forced to seek preliminary injunctions from federal courts to protect themselves while the validity of the taxes are adjudicated. Indeed, in effect, that is precisely what petitioners were forced to do in this case. After the court below refused petitioners any interlocutory protection after this Court's decision in the *Scheiner* case, petitioners were required to seek and obtain such protection from Justice Blackmun. Certainly if the decision below is affirmed, NPTC would feel obliged in any future case it brought challenging state taxes or fees to seek a preliminary injunction or escrow order from a federal court if such relief were denied by state courts.[8]

Furthermore, as NPTC can attest from ample experience, the potential application of *Chevron* in cases like this one creates enormous uncertainty on the part of taxpayers during the period in which the validity of the tax is being litigated. One troublesome consequence of that uncertainty and of decisions like those of the court below is that they simply promote and encourage noncompliance with state tax laws. Many taxpayers confronted with taxes of questionable constitutionality and serious doubts as to whether their tax payments will be returned after the conclusion of litigation challenging the tax will have strong inducements simply not to pay the tax. Substantial noncompliance, in turn, creates great inequities among taxpayers. Where, as in this case, taxes are ultimately struck down but refunds are not paid, taxpayers who complied with the law and paid their taxes between 1983 and 1988 will be penalized and those who did not will be rewarded.

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[8] In most of the suits brought by NPTC's predecessor, PTCA was successful in persuading state trial courts to issue escrow orders.

D. Application of Chevron Analysis To This Category Of Cases Will Require This Court's Close Review Of The Facts And Alleged Equities Of Each Case To Ensure That National Interests Are Protected.

The final reason NPTC submits that application of the *Chevron* exception to this category of cases is that it will inevitably require this Court to review closely every case in which state courts apply *Chevron* to deny tax refunds in order to protect the national interest in the free flow of interstate commerce. That result will not only add substantially to the burden on this Court but also to the costs and burdens of the interstate enterprises that are subject to the taxes.

The reason that this Court's case-by-case review will be required is well ilustrated by this case. NPTC submits that the actions and rulings of the courts of Arkansas in this case plainly reflect that their primary concern is the revenue interests of the State of Arkansas and that they gave substantially greater weight to those interests than to the interests of out-of-state trucking companies in receiving tax refunds. To assert as much is not in any way to impugn the integrity and good faith of the courts of Arkansas. It is merely to recognize what the Framers of the Commerce Clause recognized: that the natural inclination of the states and their institutions—both legislative and judicial—is to be more responsive to and concerned with local needs and interests than with the interests of those outside the state. The Framers knew also that powerful political forces would drive these tendencies and that a strong national power over interstate commerce was needed to restrain them. This Court has recognized these realities on numerous occasions. See, *e.g.*, *Nippert v. Richmond*, 327 U.S. 416, 434-435 (1946); *McGoldrick v. Bermind-White Coal Mining Co.*, 309 U.S. 33, 45 n.2 (1940); *United States v. County of Fresno*, 429 U.S. 452, 458-59 (1977).

Many other state court decisions in this area reflect the same perspective and primary concern with state revenue needs as the Arkansas courts showed in this case. For example, in *Continental Trailways, Inc. v. Director, Division of Motor Vehicles*, 509 A.2d 769 (N.J. 1986), the Supreme Court of New Jersey denied refunds of taxes found to violate the Commerce Clause and candidly admitted that its decision was based on the court's policy to place the state's revenue interests over the federal constitutional rights of interstate carriers. The court stated (509 A.2d at 780); "Public policy discourages suits for refunds of taxes erroneously paid or illegally collected." *See also, Private Truck Council of America, Inc. v. State of New Hampshire, supra*, 517 A.2d at 1154, denying refunds on the basis of "policy considerations" relating to the state's revenue interests.

The kind of analysis required by *Chevron*, at least as applied to discriminatory state taxes, significantly enhances the likelihood that state courts will exercise their natural tendency to favor state interests over out-of-state interests; indeed, it almost encourages them to do so. *Chevron* calls upon courts to weigh considerations that are not easily quantifiable or determinable—the foreseeability of a particular decision, whether retroactive application will help or hinder Commerce Clause policies, and other unspecified equitable considerations—and, in the context of this class of cases, to apply those considerations to the particular facts in order to determine whether the state treasury will be required to pay what are often very substantial sums to out-of-state interests. Given the seemingly broad and flexible nature of the *Chevron* analysis, it is hardly surprising that many state courts have, like the Supreme Court of Arkansas, applied the *Chevron* factors to find in favor of the State Treasuries.[9]

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[9] In connection with the application of the *Chevron* analysis by state courts, issues related to discriminatory state taxes are very

State courts have ruled in favor of state revenue interests with increasing frequency despite the fact, discussed earlier, that consideration of *Chevron*'s third factor alone should rarely, if ever, justify denial of retroactive relief. Accordingly, unless this Court makes clear that the *Chevron* exception should not be applied to this class of cases, or should be applied only in very exceptional and specifically defined circumstances, the questions posed by this case will continue to come up in case after case; and the only way to ensure and to satisfy litigants that the interests of out-of-state taxpayers and the policies of the Commerce Clause have been properly weighed will be for this Court carefully to review, essentially on a *de novo* basis, each state court decision adverse to the taxpayers. That review imposes substntial burdens not only on the Court but also on the litigants and taxpayers.

Eliminating burdens on the Court and litigants is not in and of itself a reason to reject a doctrine of law in a particular class of cases. The fact that it will call for this Court's case-by-case review in this class of cases is, however, a further reason supporting NPTC's submission that the *Chevron* exception to the general rule of retroactive application is not appropriate in the case of decisions invalidating discriminatory state taxes under the Commerce Clause.

In summary, NPTC submits that the Court should hold that the *Chevron* exception to the general rule of retroactivity is not normally appropriate in cases involving discriminatory state taxes held to violate the Commerce

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different from most other legal and constitutional isseues that state courts may be called upon to apply *Chevron* to. The very constitutional infirmity that this class of cases deals with is favoritism shown by the state itself to state and local interests. These cases thus provide a built-in reason for doubting that, in making the kind of assessments called for by *Chevron*, state courts will properly balance the interests of the state and the interests of out-of-state inteersts.

Clause. If the Court believes that *Chevron* principles should be applied in these cases, however, the Court should at least indicate with some specificity what equitable consideration would justify denial of retroactive relief and should make clear that a state's revenue needs are not relevant considerations.

CONCLUSION

The judgment of the Supreme Court of Arkansas should be reversed.

Respectfully submitted,

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January 6, 1989